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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 18, 2000

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY CASE NO. PUE000343

For Approval of Generation Facilities
pursuant to Virginia Code § 56-580 D
or, in the Alternative, for Approval
of Expenditures pursuant to Virginia
Code § 56-234.3 and for a Certificate
of Public Convenience and Necessity
pursuant to Virginia Code § 56-265.2

and

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY CASE NO. PUF000021

For authority under Chapters 3, 4,
and 5 of Title 56 of the Code of
Virginia to participate in lease
financing arrangements for
construction of generation
facilities, and for a
declaration of non-jurisdiction

ORDER FOR NOTICE AND HEARING

On June 16, 2000, Virginia Electric and Power Company
("Virginia Power" or "the Company") filed an application with
the State Corporation Commission ("Commission") seeking approval
to reconfigure the generation units and to construct a new
generating plant at the Possum Point Power Station in Prince
William County, Virginia (hereafter collectively referred to as
"the Project"). The Project is proposed to be operational in

May 2003, and will increase Company-owned generating capacity by approximately 397 megawatts ("MW").

Coincident with its June 16 application docketed in Case No. PUE000343, the Company filed a "Motion for Determination of Applicability of, or in the Alternative, for Exemption or Waiver from, Bidding Rules" ("Motion"). In this Motion, the Company requested that the Commission find that the Rules Governing the Use of Bidding Programs to Purchase Electricity from Other Power Suppliers ("Bidding Rules"), 20 VAC 5-301-10 et seq., adopted in Case No. PUE900029, were inapplicable to the Project, or alternatively, that the Commission grant it an exemption or waiver from these Rules.

On July 5, 2000, Virginia Power filed an application seeking authority from the Commission to participate in lease financing arrangements of approximately \$300 million relating to the construction of generation facilities at the Possum Point Power Station and for a declaration that the Commission would not assert jurisdiction over other parties participating in these arrangements who will serve as vehicles for financing the Project. Among other things, the July 5 application docketed as Case No. PUF000021 sought approval under Chapters 3,¹ 4,² and 5

¹ On July 27, 2000, an Order was entered, extending the Commission's authority to approve the Company's application under Chapter 3 until thirty days after the Commission's determination of the applicability of the Bidding Rules and other issues identified in the Commission's July 26 Order Inviting Comments and Responses and Prescribing Notice. See Application of Virginia Electric and Power Company, For authority under Chapters 3, 4, and 5 of Title 56 of

of Title 56 of the Code of Virginia in connection with the financing and leasing arrangements described in that application.

On July 7, 2000, the Virginia Committee for Fair Utility Rates filed a Notice of Protest in this matter.

On July 26, 2000, the Commission issued an Order Inviting Comments and Responses and Prescribing Notice. This Order docketed the proceeding, identified certain preliminary issues presented in these cases, prescribed public notice, and appointed a hearing examiner to make recommendations on the preliminary issues identified therein. The issues on which comment or request for hearing was sought were:

(1) Whether the Bidding Rules are applicable to the Project, or in the alternative, if they do apply, whether the Commission should grant Virginia Power an exemption to these Rules.

(2) Whether the Commission should approve the Project exclusively under § 56-580 D of the Code of Virginia, or under §§ 56-234.3, and/or 56-265.2 as well.

(Fn. 1 con't.) the Code of Virginia to participate in lease financing arrangements for construction of generation facilities, and for a declaration on non-jurisdiction, Case No. PUF000021, Doc. Con. Ctr. No. 000740225 (July 27, 2000, Order Extending Authority).

² See also Application of Virginia Electric and Power Company, For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia to participate in lease financing for construction of generation facilities, and for a declaration of non-jurisdiction, Case No. PUF000021, Doc. Con. Ctr. No. 001010176 (Oct. 3, 2000, Order) (approving the Company's request for authority to enter into a financial transaction with an affiliate under Chapter 4 of Title 56, contingent upon the Commission's issuance of all additional, required authorizations, approvals and certificates).

(3) If § 56-234.3 of the Code of Virginia applies to this Project, whether the Company should be granted an exemption from that provision, or approval under it to make "at risk" financial expenditures in association with the Project.

On August 21, 2000, Staff and the Company each filed Comments addressing the preliminary issues identified in the July 26, 2000, Order.

On August 24, 2000, the Commission's Hearing Examiner entered a Protective Ruling governing the procedures relevant to confidential and proprietary information filed in this matter.

On September 1, 2000, the Chief Hearing Examiner issued her Interim Report on Preliminary Issues. In her Report, she made the following findings:

1. The Bidding Rules are applicable, but a waiver of those rules should not be granted and does not appear necessary in this case;
2. The Company should be directed to supplement its pre-filed direct testimony with information on the alternatives bid in its January 1999 and December 1999 solicitations if relevant to this case. If not relevant, the Company should so advise the Commission in comments hereto;
3. If the recent solicitation is not relevant to consideration of market alternatives herein, the Company should be directed to issue a Request for Proposals on a parallel track to consideration of this Project;
4. The application should be evaluated pursuant to Virginia Code §§ 56-46 (sic), 56-234.3, 56-265.2, and 56-580 D;

5. The Company should file an affidavit and schedule of expected expenditures as described above with its comments to this Report; and

6. Virginia Power should be granted interim authority to undertake permitting and preliminary site work, and to make financial expenditures for the proposed Project at its own expense and risk subject to the Commission's review of the supporting affidavit.

The Chief Hearing Examiner recommended that the Commission enter an order that: adopts the findings in her Interim Report; grants the Company approval pursuant to § 56-234.3 of the Code of Virginia to proceed with financial expenditures, permitting and preliminary site work as is necessary to facilitate the timely completion of the Possum Point Project, if finally approved by the Commission; and establishes a procedural schedule to receive evidence on the pending applications applying the statutory standards for review set forth in Virginia Code §§ 56-46, 56-234.3, 56-265.2, and 56-580 D. The Chief Hearing Examiner invited the parties to the proceeding to file comments to her Report within seven (7) days of the Report's date.

On September 8, 2000, Virginia Power filed its Comments on the Interim Report on Preliminary Issues ("Comments"). In its Comments, among other things, the Company asserted that the Chief Hearing Examiner's Report failed to analyze the special circumstances of the Project that warrant an exemption from the

bidding process. At page 8 of its September 8 Comments, the Company noted it had conducted two solicitations in the recent past, including a December 1999 solicitation in conjunction with its application docketed as Case No. PUE000009. It asserted that its Requests for Proposals ("RFP") in the solicitations sought capacity commencing from 2000 to 2002, and bids in the December 1999 solicitation were due on January 17, 2000.

Virginia Power contended that neither RFP was restricted to peaking capacity. Each RFP, according to the Company, indicated that it was possible that economically priced base or intermediate generation could displace some or all of the peaking capacity, and that such proposals would be evaluated. Id. According to Virginia Power, bids for two combined-cycle projects were submitted in response to the second RFP. Virginia Power contends that the data received in response to these solicitations is recent, that a new solicitation was likely to provide little, if any, new information, and that the types of capacity bid were similar to that involved with the Possum Point Project. The Company's September 8 Comments continue to assert that its application should be evaluated under § 56-580 D rather than §§ 56-234.3 and -265.2 of the Code of Virginia.

The September 8 Comments also withdrew the Company's request for approval of "at risk" financial expenditures. The Company advises that a special purpose subsidiary of Dominion

Energy, Inc., rather than Virginia Power, made the necessary commitments with financial institutions for equipment associated with the Project. Virginia Power noted it was continuing to evaluate whether any construction expenditures would be necessary and whether Commission approval would be required. The Company represented that it would promptly notify the Hearing Examiner and Commission if any "at risk" approvals become necessary and would file an affidavit, as set forth in the Interim Report on Preliminary Issues, at that time.

NOW, UPON consideration of the Company's applications, the Hearing Examiner's Report, the Comments thereto, and the applicable statutes, the Commission is of the opinion and finds that the Bidding Rules do apply to Virginia Power's Project at Possum Point. The Company is adding capacity to its system when it proposes to construct the 540 MW combined cycle generating unit. Virginia Power has an active bidding program and, therefore, is required to bid out incremental generating capacity additions or seek an appropriate waiver of the Bidding Rules. These rules were intended to provide a broad and flexible framework for capacity acquisitions for electric utilities with bidding programs.³ However, "[w]ith limited exceptions," all capacity acquisitions must be conducted through

³ Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of adopting Commission rules for electric capacity bidding programs, Case No. PUE900029, 1990 S.C.C. Ann. Rept. 340 (hereafter "Case No. PUE900029").

a utility's bidding program,⁴ or a waiver of the bidding rules must be sought.

Having found that the Bidding Rules apply, we further conclude that no further bids need be solicited by the Company. As indicated in its September 8 Comments at pages 8 and 9, the Company conducted two solicitations in the recent past, one in January 1999 and another in December 1999. Neither RFP was restricted to peaking capacity. Two combined-cycle projects were submitted in response to the second RFP. Virginia Power maintains that the capacity was bid in a time frame close to that of the Project now under consideration, and that the types of capacity bid were similar to that under consideration as part of the Possum Point Project. Accordingly, the proposed costs for construction supplied in those bids may be considered reliable evidence of the competitive market cost of such generation.

Under these circumstances, we will not require Virginia Power to conduct a further solicitation. However, we will further scrutinize the responses to the Company's recent RFPs to consider whether these responses present better alternatives than the Possum Point Project now under consideration. We

⁴ Application of Virginia Electric and Power Company, For Approval of Expenditures for New Generation Facilities pursuant to Va. Code § 56-234.3 and for a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, Case No. PUE980462, 1999 S.C.C. Ann. Rept. 428, 429.

hereby direct the Hearing Examiner to receive evidence on this issue.

With regard to the issue whether this Project should be considered exclusively under § 56-580 D of the Code of Virginia, we agree with the Chief Hearing Examiner that the General Assembly did not repeal §§ 56-234.3 and -265.2 of the Code of Virginia. Therefore, we cannot find that § 56-580 D is to apply exclusively to our consideration of all new generation project applications from the date of that statute's enactment. We also conclude that §§ 56-234.3, -265.2, and -580 D can and should be harmonized. Our regulation of the construction and operation of generating facilities now must consider all applicable statutes, including §§ 56-234.3, -265.2, and -580 D of the Code of Virginia. These respective statutes emphasize slightly different public interest criteria by which we must evaluate the construction and operation of generating units such as the Possum Point Project, but they are not in conflict.

No ruling is presently necessary on the issue of whether the Company should be granted an exemption from § 56-234.3 of the Code of Virginia or approval under that statute to make "at risk" financial expenditures. At pages 12-13 of its September 8 Comments, the Company withdrew its request for approval of "at risk" financial expenditures related to this Project. However,

Virginia Power appears to reserve the right to request "at risk" approvals at a later time.

In the event the Company later determines to request "at risk" approval with respect to this Project, it must file an affidavit with the Commission supporting the need for such expenditures, together with a schedule of when such expenditures must be made, the expected level of such expenditures, and an explanation of why the Company cannot wait until the case is finally decided to make the requested expenditures.

Additionally, consistent with the requirements of §§ 56-234.3 and -265.2 of the Code of Virginia, we find that notice should be given and hearings on the applications should be held. The Commission Staff should investigate the captioned applications and present its findings to the Commission in testimony.

Accordingly, IT IS ORDERED THAT:

(1) As permitted under § 12.1-31 of the Code of Virginia and Rule 7:1 of the Commission's Rules of Practice and Procedure ("the Rules"), 5 VAC 5-10-520, this matter is remanded to the Hearing Examiner to conduct further proceedings on behalf of the Commission and to file a final report in this matter with a transcript of this proceeding.

(2) A public hearing for the purpose of receiving evidence relevant to the application as docketed in PUE000343 and

PUF000021 is hereby scheduled for January 16, 2001, before a Hearing Examiner at 10:00 a.m., in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia.

(3) Virginia Power shall file a copy of its applications and all materials it may subsequently file in this proceeding in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, for public review between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, during the Commission's regular business days. Further, Virginia Power shall make a copy of its applications and all materials it may subsequently file in this proceeding available for public inspection during regular business hours at the Potomac Community Library, 2201 Opitz Boulevard, Woodbridge, Virginia 22191-3377. Copies of these documents and materials may also be ordered from the Company's counsel Edward L. Flippen, Esquire, James C. Dimitri, Esquire, and Kodwo Gharthey-Tagoe, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219.

(4) On or before November 8, 2000, the Company shall prefile with the Commission an original and twenty (20) copies of any additional direct testimony providing the information required by § 56-234.3 of the Code of Virginia, specifically addressing, at a minimum: (i) the Company's preliminary

construction plans, and (ii) the plans by which Virginia Power will monitor such construction to ensure that the work is done in a proper, expeditious, and efficient manner. In addition, such testimony shall address whether any of the bids received in the January and December 1999 solicitations represent a better alternative than the Project under consideration, together with any information the Company intends to present in support of the applications during the public hearing to be convened on January 16, 2001.

(5) On or before November 9, 2000, the Company shall complete the publication of the following notice, to be published as display advertising (not classified) once a week for two (2) consecutive weeks in newspapers having general circulation in Prince William County, Virginia:

NOTICE TO THE PUBLIC OF APPLICATIONS BY
VIRGINIA ELECTRIC AND POWER COMPANY FOR
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY FOR GENERATION FACILITIES AND
FOR AUTHORITY TO PARTICIPATE IN LEASE
FINANCING ARRANGEMENTS FOR CONSTRUCTION
OF GENERATION FACILITIES
CASE NOS. PUE000343 AND PUF000021

On June 16, 2000, Virginia Electric and Power Company ("Virginia Power" or "the Company") filed with the State Corporation Commission ("Commission") an application to take two existing oil-fired generating units (Units 1 and 2) out of service, convert two existing coal-fired units (Units 3 and 4) to natural gas, and construct a new combined-cycle generating unit with a rated capacity of 540 megawatts (collectively "the Project") at the Possum Point Power Station

located in Prince William County, Virginia. This application was docketed as Case No. PUE000343. The Company maintains that it will not have to acquire any additional real property to construct the new generating unit and that no additional rights-of-way will be needed to connect the new unit to its transmission system. The new generating unit is expected to cost an estimated \$280 to \$300 million.

On July 5, 2000, Virginia Power filed another application related to the Project seeking authority from the Commission to participate in lease financing arrangements of approximately \$300 million for construction of the proposed generating facilities. As part of this application, among other things, the Company seeks a declaration that the Commission will not assert jurisdiction over certain other financing parties to the transaction, including an affiliate of the Company, as public utilities. The July 5 application seeks approval under Chapter 3 of Title 56 of the Code of Virginia, because the financing arrangements may be considered to create an evidence of indebtedness, under Chapter 4 of Title 56 of the Virginia Code because the transaction will involve jurisdictional contracts or arrangements between Virginia Power and a subsidiary of Dominion Energy, Inc., an affiliate of Virginia Power, and under Chapter 5 of Title 56 of the Code of Virginia because Virginia Power proposes to transfer real property at Possum Point, by means of a ground lease, on which the new facility will be constructed and will be reacquiring the constructed facility and related real property as a sublease. The July 5 application has been docketed as Case No. PUF000021.

By Order dated October 3, 2000, the Commission granted Virginia Power authority to enter into a financial transaction with an affiliate in Case No. PUF000021 pursuant

to Chapter 4 of Title 56 of the Code of Virginia, contingent upon the Commission's subsequent issuance of all additional, required authorizations, approvals, and certificates. All other issues raised in Case No. PUF000021 remain under the Commission's review and are subject to further order of the Commission.

A public hearing to receive evidence relevant to Virginia Power's applications in Case Nos. PUE000343 and PUF000021 will be convened on January 16, 2001, before a Hearing Examiner at 10:00 a.m. in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

A copy of each application is available for public inspection between the hours of 8:15 a.m. and 5:00 p.m. in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219. A copy of each application is available for public inspection during regular business hours at the Potomac Community Library, 2201 Opitz Boulevard, Woodbridge, Virginia 22191-3377. A copy of each application, together with copies of any materials subsequently filed herein, may also be obtained from Virginia Power's counsel at the address noted below.

Persons interested in participating in the proceeding as a Protestant as defined in the Commission's Rules of Practice and Procedure are directed to the Commission's Order for Notice and Hearing for specific procedural instructions. This Order may be requested from Virginia Power by writing to the Company's counsel, Edward L. Flippen, Esquire, James C. Dimitri, Esquire, and Kodwo Ghartey-Tagoe, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030.

Any interested person desiring to comment in writing on Virginia Power's

applications may do so by directing such comments on or before December 5, 2000, to the Clerk of the Commission, P.O. Box 2118, Richmond, Virginia 23218-2118, and refer to Case No. PUE000343.

Any person desiring to make a statement at the public hearing concerning Virginia Power's applications need only appear in the Commission's second floor courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself as a public witness to the Commission's Bailiff.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (Voice) or 1-804-371-9206 (TDD).

VIRGINIA ELECTRIC AND POWER COMPANY

(6) On or before November 9, 2000, the Company shall serve a copy of its applications and this Order, by personal delivery or by first-class mail, postage prepaid, to: The Honorable John Paul Woodley, Jr., Secretary of Natural Resources, P.O. Box 1475, Richmond, Virginia 23218; and Dennis K. Treacy, Director, Department of Environmental Quality, P.O. Box 1009, Richmond, Virginia 23240-0009.

(7) On or before November 9, 2000, Virginia Power shall serve a copy of this Order on the chairman of the board of supervisors of any county and upon the mayor or manager of any county, city, or town (or on equivalent officials in counties, towns, and cities having alternative forms of government) within Virginia Power's service area. Service shall be made by first-

class mail or delivery to the customary place of business or residence of the person served.

(8) Any person desiring to comment in writing on Virginia Power's applications may do so by directing such comments on or before December 5, 2000, to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Comments must refer to Case No. PUE000343. Any person desiring to make a statement at the public hearing concerning the applications need only appear in the Commission's second floor courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff as a public witness.

(9) On or before December 5, 2000, any person desiring to submit evidence, cross-examine witnesses, or otherwise participate in the proceeding as a Protestant, as defined in Rule 4:6, 5 VAC 5-10-180, of the Commission's Rules of Practice and Procedure, shall file an original and twenty (20) copies of a Notice of Protest as provided in Rule 5:16(a), 5 VAC 5-10-420 B and shall serve a copy of the same on Virginia Power's counsel, Edward L. Flippen, Esquire, James C. Dimitri, Esquire, and Kodwo Ghartey-Tagoe, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. The Notice of Protest shall refer to Case No. PUE000343.

(10) Within five (5) days of receipt of a Notice of Protest, the Company shall serve upon each Protestant a copy of this Order, a copy of the applications, and a copy of all materials available for public review now or hereafter filed with the Commission.

(11) On or before December 15, 2000, any person participating as a Protestant pursuant to Rule 4:6, 5 VAC 5-10-180, shall file with the Clerk of the Commission an original and original and twenty (20) copies of its Protest as provided in Rule 5:16(b), 5 VAC 5-10-420 C, together with an original and twenty (20) copies of the prepared testimony and exhibits the Protestant intends to present at the hearing, referring to Case No. PUE000343, and shall simultaneously serve a copy thereof on Virginia Power's counsel and on any other Protestants. The Protest shall set forth (i) a precise statement of the interest of the Protestant in the proceeding; (ii) a full and clear statement of the facts which the Protestant is prepared to prove by competent evidence; and (iii) a statement of the specific relief sought and the legal basis therefor. Any corporate entity that wishes to submit evidence, cross-examine witnesses, or otherwise participate as a Protestant must be represented by legal counsel in accordance with the requirement of Rule 4:8 of the Commission's Rules of Practice and Procedure, 5 VAC 5-10-210.

(12) The Commission Staff shall analyze Virginia Power's applications and, on or before December 15, 2000, shall file with the Clerk of the Commission an original and twenty (20) copies of the prepared testimony and exhibits it intends to present at the public hearing.

(13) On or before January 2, 2001, the Company shall file with the Clerk of the Commission an original and twenty (20) copies of any testimony it expects to introduce in rebuttal to the direct prefiled testimony of Staff and Protestants. Additional rebuttal evidence may be presented without prefiling, provided it is in response to evidence which was not prefiled but elicited at the time of the hearing and, provided further, the need for additional rebuttal evidence is timely addressed by motion during the hearing and leave to present said evidence is granted by the Commission. A copy of the prefiled rebuttal evidence shall be served upon the Commission Staff and all other parties to the proceeding on or before January 2, 2001.

(14) At the commencement of the hearing scheduled herein, Virginia Power shall provide to the Commission proof of the notice and service required by ordering paragraphs (4), (5), and (6) herein.